



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2023-0201; FRL-10839-01-R7]

**Air Plan Partial Approval and Partial Disapproval; Missouri;
Revision to Sulfur Dioxide Control Requirements for Lake Road
Generating Facility**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing partial approval and partial disapproval of revisions to the Missouri State Implementation Plan (SIP) submitted by the State of Missouri on February 17, 2022. In its submission, the Missouri Department of Natural Resources (MoDNR) requested that revisions to a 2016 Administrative Order on Consent (AOC) for controlling sulfur dioxide (SO₂) emissions at the Lake Road power plant (hereinafter referred to as "2016 AOC") be approved in the SIP. The revised AOC establishes more stringent fuel oil sulfur content limits, removes SO₂ emission limits that are no longer needed due to the strengthened fuel oil sulfur requirements, and streamlines reporting requirements. The changes proposed for approval meet the requirements of the Clean Air Act (CAA). The EPA is proposing disapproval of a new provision in the AOC that would potentially allow Lake Road to exceed the fuel oil sulfur content limits on a temporary basis.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2023-0201 to www.regulations.gov. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: donohue.allie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2023-0201, at www.regulations.gov. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

II. What is Being Addressed in this Document?

The EPA is proposing to partially approve and partially disapprove a SIP revision submitted by the State of Missouri on February 17, 2022. In its submission, MoDNR requested that AOC No. APCP-2015-118 between MoDNR and Evergy (formerly Kansas City Power & Light) submitted in 2016, and amended in 2018 (Amendment #1), be replaced with Amendment #2 to the AOC in the SIP. The EPA is proposing to approve these SIP revisions, with the

exception of Amendment #2 paragraph 12.A. The revisions proposed for approval meet the requirements of the Clean Air Act. The EPA is proposing disapproval of Amendment #2 paragraph 12.A. because this provision potentially allows Lake Road to burn fuel oil with a sulfur content greater than the sulfur content limit of 15 parts per million (ppm) on a temporary basis. Paragraph 12.A. is severable from Amendment #2 because it is a new paragraph that was not previously included in the 2016 AOC and Amendment #1 and is not approved in the SIP. The technical support document (TSD) included in this docket discusses our review and analysis of Amendment #2 and provides support for our proposed action.

A. 1997 Violation of the 1971 SO₂ National Ambient Air Quality Standards (NAAQS)

In 1997, a monitor in St. Joseph (Buchanan County), Missouri measured a violation of the 1971 24-hour SO₂ NAAQS. At the time of the 1997 violation, Buchanan County was designated as "Better than National Standards" (equivalent to "attainment") for the 1971 24-hour SO₂ NAAQS. To address the violation, the State of Missouri and the St. Joseph Light and Power (SJLP) Company entered into a Consent Decree that required SO₂ control measures at the SJLP Lake Road power generating facility, hereinafter referred to as the "2000 Consent Decree."¹ The 2000 Consent Decree was submitted by the State of Missouri in order

¹ The EPA is referring to the Consent Decree as the "2000 Consent Decree" to be consistent with the State's November 2, 2018, SIP revision submittal. The 2000 Consent Decree was entered by the Circuit Court of Buchanan County, Missouri, on May 25, 2001.

to maintain attainment of the 1971 24-hour SO₂ NAAQS and was not submitted because of a SIP call. On November 15, 2001, the EPA approved the 2000 Consent Decree as a revision to Missouri's SIP (66 FR 57389, November 15, 2001).

B. Designation of Buchanan County for the 2010 SO₂ NAAQS

On June 22, 2010, the EPA established a new 1-hour SO₂ standard ("the 2010 SO₂ NAAQS") and revoked the existing 24-hour and annual primary SO₂ standards (75 FR 35520, June 22, 2010, at 75 FR 35592). The EPA directed States to continue implementing any attainment and maintenance requirements of the 1971 24-hour SO₂ NAAQS until the requirements were subsumed by any new planning and control requirements associated with the 2010 SO₂ NAAQS (75 FR 35520, June 22, 2010, at 75 FR 35580). Accordingly, areas designated as nonattainment for the 2010 SO₂ NAAQS or areas that do not meet the requirements of a SIP call for the 1971 SO₂ NAAQS remain subject to the 1971 SO₂ NAAQS until the area submits, and EPA approves, an attainment plan for the 2010 SO₂ NAAQS. See 40 CFR 50.4(e). However, the EPA also stated that any existing SIP provisions under Clean Air Act (CAA) sections 110, 191 and 192 for the 1971 24-hour SO₂ NAAQS remain in effect (75 FR 35520, June 22, 2010, at 75 FR 35581).

On January 9, 2018, Buchanan County was designated as Attainment/Unclassifiable for the 2010 SO₂ NAAQS (83 FR 1098, January 9, 2018) and therefore the State of Missouri was not required to submit a SIP providing for attainment of the SO₂ NAAQS under sections 191 and 192 of the CAA. However, because

the 2000 Consent Decree was approved pursuant to section 110 of the CAA, the provisions of the Consent Decree remain in effect notwithstanding EPA's revocation of the 1971 24-hour SO₂ NAAQS and designation of Buchanan County as Attainment/Unclassifiable for the 2010 SO₂ NAAQS.

C. 2016 AOC and Amendment #1

Kansas City Power & Light (KCPL) acquired SJLP's Lake Road facility in 2008. On March 30, 2015, KCPL notified the MoDNR of its intent to cease the combustion of coal in Boiler No. 6 at the facility by April 16, 2016, to comply with the Mercury Air Toxics Standards rule, 40 CFR part 63, subpart UUUUU. KCPL also requested to use natural gas instead of coal as the primary fuel and to designate No. 2 fuel oil the secondary fuel of Boiler No. 6.

Because the 2000 Consent Decree stipulated the type of fuel to be used in each combustion unit, including Boiler No. 6, MoDNR and KCPL entered into an AOC on March 30, 2016, that included the substantive requirements from the 2000 Consent Decree and revised the fuel requirements for Boiler No. 6.

On June 13, 2018, the MoDNR and KCPL issued Amendment #1 to the 2016 AOC to require low sulfur coal as the primary fuel in Boiler No. 5, rather than a blend of high and medium sulfur coal as required by the 2000 Consent Decree and the 2016 AOC. The EPA approved the 2016 AOC and Amendment #1 into Missouri's SIP at 40 CFR 52.1320(d)(32) and (33) in August 2019.²

² See 84 FR 44233; August 23, 2019.

D. Amendment #2

Evergy became the current owner and operator of Lake Road after KCPL and Westar Energy merged to become Evergy in 2018. In 2021 MoDNR and Evergy revised the AOC for Lake Road by issuing Amendment #2 that consolidates all requirements into a single document, lowers the fuel oil sulfur content limit from 500 ppm to 15 ppm, eliminates SO₂ emission rate limits that are no longer necessary due to the more stringent fuel oil sulfur content limits, makes the retirement of Boiler No. 3 permanent and enforceable, and streamlines reporting and record keeping requirements. Amendment #2 does not revise the SO₂ emission rate limit of 1.349 pounds per million British thermal units (lb/MMBtu) for Boiler No. 5. Amendment #2 also adds language in paragraph 12.A. that allows MoDNR to grant temporary exemptions to the fuel oil requirements due to unforeseen circumstances.

In its submission, MoDNR included an analysis of SO₂ emissions from the Lake Road facility between 2002 through 2020. MoDNR's analysis demonstrated that Lake Road SO₂ emissions have decreased by 94.84 percent from 2002 through 2020, attributable to the 2000 Consent Decree and the fuel requirements provided in the 2016 AOC, Amendment #1, and Amendment #2. MoDNR states that Amendment #2 will ensure the SO₂ emissions decreases at Lake Road over the past 20 years remain permanent and further assist with maintenance and attainment of both the 1971 and 2010 SO₂ NAAQS.

Section 110(1) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement

concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Based on our analysis of Amendment #2, the EPA proposes to conclude that the SIP revision, with the exception of paragraph 12.A., is in accordance with the requirements of section 110(l) of the CAA. The EPA proposes to disapprove Amendment #2 paragraph 12.A. because it potentially allows the facility to burn fuel oil with sulfur content that exceeds the 15 ppm sulfur content limit on a temporary basis. The EPA's analysis of Amendment #2 can be found in the TSD included in this docket.

III. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from November 1, 2021, to December 9, 2021, and received no comments. In addition, as explained above and in more detail in the TSD which is part of this docket, the revisions proposed for approval meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

As explained in section II and further in the TSD, EPA is proposing to disapprove Amendment #2 paragraph 12.A. regarding temporary exemptions from fuel requirements.

IV. What Action is the EPA Taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. We are publishing the proposed rule in the *Federal Register* to partially approve and partially disapprove the SIP submission. Any parties interested in commenting must do so by the date listed in the **DATES** section of the document. For further information about commenting on this proposed rule, see the **ADDRESSES** section of the document. If the EPA receives adverse comment, we will address all public comments in the subsequent final rule based on the proposed rule.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add the incorporation by reference of the Missouri Amendment #2 to Administrative Order on Consent state effective October 18, 2021, between MoDNR and Evergy related to controlling sulfur dioxide (SO₂) emissions at the Lake Road power plant, as discussed in Section II of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also, in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Missouri Administrative Order on Consent and Amendment #1 (state effective September 27, 2018) from the Missouri State Implementation Plan, which was incorporated by reference in accordance with the requirements of 1 CFR part 51. As described in the proposed amendments to 40 CFR part 52 set forth below, EPA is also proposing to remove an outdated reference to the St. Joseph Light and Power So₂ consent agreement (state effective May 21, 2001).

VI. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within a 2-mile radius of the Lake Road facility Census 2010 Summary Report available on Environmental Justice Screen (EJSCREEN). The EPA then compared the data to the state average for each of the demographic groups using 2010 state census data from the United States Census Bureau. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the 2-mile radius of the Lake Road facility, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (16 percent versus 21 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the state

average (3 percent versus 12 percent) and the percent of the population that is American Indian/Alaska Native is similar to the state average (1 percent versus 1 percent). The percent of the population that is two or more races is similar to the state average (3 percent versus 3 percent). The percent of people with low income within the 2-mile radius of the Lake Road facility is higher than the state average (41 percent versus 31 percent).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse

human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 18, 2023.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In § 52.1320, in the table in paragraph (d):

a. Remove and reserve entries "(17)", "(32)", and "(33)";
and

b. Add entry "(38)" in numerical order.

The addition reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-Approved Missouri Source-Specific Permits and Orders

Name of source	Order/Permit number	State effective date	EPA Approval date	Explanation
* * * * *				
(38) Kansas City Power and Light - Lake Road Facility	Amendment #2 to Administrative Order on Consent No. APCP-2015-118	10/18/2021	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	EPA is approving Amendment #2 to AOC No. APCP-2015-118, except for paragraph 12.A.

* * * * *